IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 504 of 1995
With
CRIMINAL APPEAL No. 520 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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BHARATBHAI KALUSINH GURKHA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR JV JAPEE for Appellants of both the appeals.
MR PD BHATE, LD.APP for Respondent-State in both the appeals.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 14/09/2007

COMMON ORAL JUDGMENT

1. Heard Shri J.V. Japee, learned counsel appearing for the appellants of both the aforesaid appeals (hereinafter referred to as 'the appellants') and Shri P.D. Bhate, learned Additional Public Prosecutor, appearing on

behalf of the respondent-State.

2. Both these appeals are arising out one and same judgment and order of conviction and sentence dated 29th April 1995 passed by the learned Additional Sessions Judge, Sabarkantha at Himatnagar in Sessions Case No.57 of 1993, and therefore, both are heard together and being disposed of by this common judgment.

3. It is submitted by Shri J.V. Japee, learned counsel appearing for the appellants of both the appeals, that the present appeals are arising out of the aforesaid judgment and order of conviction and sentence whereby the learned trial Judge held the appellants guilty for the charge of offence punishable under Section 363 of the Indian Penal Code and also under Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') and sentenced each of the appellants to undergo rigorous imprisonment for two years and a fine of Rs.2000/-, in

default to undergo simple imprisonment for two months for the offence punishable under Section 363 of the Indian Penal Code. So far as the offence punishable under Section 3(1)(10) of Act is concerned, the each appellant has been sentenced to undergo simple imprisonment for six months and a fine of Rs.5000/-, in default to undergo simple imprisonment for one month. The learned trial Judge has ordered both the sentences to run concurrently. It is submitted by Shri Japee that though the appellants have been charged for the offence punishable under Sections 363, 366 and 506(2) of the Indian Penal Code and also under Sections 3(1)(10) and 3(2)(5) of the Act, at the conclusion of the trial, the learned trial Judge has held the appellants guilty for the offence punishable under Section 363 of the Indian Penal Code and under Section 3(1)(10) of the Act only.

4. The appellants have challenged the legality and validity of the judgment and order of conviction and sentence passed by learned trial Judge wherein total three accused

persons were prosecuted and all the three have been held guilty by the learned trial Judge as aforesaid. The appellants-orig.accused nos.1 and 2 have challenged the judgment and order of conviction and sentence by way of preferring Criminal Appeal No.504 of 1995, and the appellant-orig.accused no.3 has challenged the judgment and order of conviction and sentence by way of preferring Criminal Appeal No.520 of 1995.

5. Shri J.V. Japee, learned counsel appearing for the appellants, as well as Shri P.D. Bhate, learned Additional Public Prosecutor, have taken me through the oral as well as documentary evidence led by the prosecution during the course of trial as well as also through the relevant part of the judgment and order under challenge.

6. To appreciate the rival contentions and to evaluate the judgment and order under challenge, keeping in mind the grounds mentioned in both the memos of appeals, firstly it is necessary to mention the facts of prosecution case in brief. According to

the prosecution, the complainant-Bababhai Karshanbhai was residing in a spinning mill compound with his family at village Hansalpur, Tal.Himatnagar. On 15th October 1993, he had left for his job in the mill premises. Thereafter, at about 02-00 p.m. his son Naresh came to him and told him that the appellant no.1-Bharatbhai Kalusinh Gurkha, who was also staying in the mill compound, had come by driving an Ambassador car bearing Registration No.GJ-9-T-678. In the said car, the appellant-Baldevbhai Maganbhai Thakore of village Dhananda was also there and and there was also the third person, who can also be identified by him. All the said three persons after coming out of the said Ambassador car dragged Premila-daughter of the complainant, forcibly at the time when Naresh-son of complainant and Premila were sitting in the house and Shantaben-mother of Naresh and Premila as well as wife of the complainant, was in the house. As the appellants were forcibly dragging and asking Premila to sit inside the said car, Naresh had raised his voice and shouted, and at that time, he was given a threat to his

life and thereafter, he had informed about the incident to his mother i.e. wife of the complainant, and it is alleged that these three appellants had kidnapped Premila, who was a minor girl, from the lawful guardianship of her parents and so the complainant rushed to the Himatnagar Town Police Station immediately. It was established that the appellants may have enticed the minor Premila so that she could have been exploited sexually. It is the say of the prosecution that one Hiraben had also seen some part of this incident and she was cited as a witness and was examined during the course of trial. The charge was framed vide Ex.8. The prosecution to bring home the charge has examined number of witnesses, including minor Premila, complainant and Hiraben, according to Shri P.D. Bhate, learned Additional Public Prosecutor, are important witnesses. Over and above this, according to Shri P.D. Bhate, the learned trial Judge has recorded a positive finding that on the date of incident, Premila was minor and she was below 18 years and above 16 years of age. According to prosecution,

her date of birth was 21st October 1976 and to prove her date of birth, two sets of evidence have been produced; one from the school authority where Premila had studied and second one is also a genuine document proved by Secretary of Village Panchayat. The said document is at Ex.54. The genuineness of document at Ex.54 has not been challenged and on perusal of the said document, it is found genuine. There is no reason for this Court to doubt the genuineness of the date of birth mentioned in the certificate and the name of the victim. The birth of Premila was registered in couple of days with the panchayat authorities. Of course, the name of Hiraben is not reflected as an eye-witness to the incident in question in the FIR, but this becomes a relevant aspect. On the contrary, the version of PW-Hiraben is found genuine. The boy who has witnessed the incident may not be knowing that PW-Hiraben is also an eye-witness of some part of the incident.

7. It is the evidence that as Premila continued her shouts, the appellants ultimately dropped

her after taking her at some distance. So they could not exploit Premila sexually. It is rightly submitted by Shri P.D. Bhate, learned Additional Public Prosecutor, that the learned trial Judge could have convicted the appellants for the offence punishable under Section 366 read with Section 511 and 114 of the Indian Penal Code.

8. I have carefully gone through the reasons assigned by the learned trial Judge for recording conviction of the appellants, which are in paragraph nos.12 to 17 of the judgment and order of conviction and sentence under challenge; and on plain reading of the deposition, the reasons assigned by the learned trial Judge accepting the version of these witnesses in the context of the charge framed, are found correct and no material error can be said to have been committed in evaluating the version of these witnesses. It is relevant to note that no exaggeration has been made by any of these witnesses. The FIR was lodged in couple of hours. So it is difficult even to assume that the facts

mentioned in the FIR would have been pointed by somebody. The identity of all the three appellants has been satisfactorily established by the prosecution and two out of three appellants were known to PW-Naresh.

9. While dealing with the appeal under Section 374 read with Section 386 of the Code of Criminal Procedure, 1973, the Court is supposed to evaluate the evidence de novo and while evaluating the evidence as well as the judgment and order of conviction and sentence under challenge, in all cases it is not necessary that the Appellate Court should assign its own reasons. If the Court is of the view that the finding recorded by the learned trial Judge is legal and based on sound reasons, then adopting those reasons the Court can uphold the finding recorded by the learned trial Judge. The learned trial Judge has considered the above discussed all the aspects including the date of birth, etc. There was no reason for Premila to implicate all the appellants. The conduct of Premila prior to incident and subsequent thereto also

corroborates her version before the Court. The complainant also gets direct corroboration from the complaint as well as the version of the victim girl. Undisputedly, at the time of lodging the FIR, Premila was not there. So the consistency found in the evidence of the complainant as well as Premila and also her brother Naresh, according to me, are sufficient to link the appellant with the crime of offence punishable under Section 363 of the Indian Penal Code.

10. However, the conviction recorded under the said Act appears to be erroneous. It is clear that the appellant no.1-Bharatbhai Gurkha was residing in the very mill compound. He was the neighbour of Premila. It is very likely that he might have been attracted towards this teen-aged girl and therefore, he might have made this venture of kidnapping her against her wish and will as well as against the wish and will of her parents. It is difficult for this Court to believe that the offence under Section 3(1)(10) of the Atrocity Act can be said to have been committed. It is neither the

charge nor the evidence that the appellants had ventured in this offending act because Premila was a member of the Scheduled Castes or Scheduled Tribes. This is not a case of victimisation of a member of Scheduled Castes and Scheduled Tribes family but it is a result of intention or motive that the appellants were carrying in their minds to exploit the teen-aged girl Premila.

11. Looking to the aforesaid facts and circumstances of case, I do not find any merit in these appeals and both the appeals, so far as the conviction recorded qua Section 363 of the Indian Penal Code is concerned, are required to be dismissed but the appeals are required to be allowed so far as the conviction recorded by the learned trial Judge qua the offence punishable under Section 3(1)(10) of the Act is concerned. As there is no appeal against the order of acquittal for the offences punishable under Sections 366 and 506(2) of the Indian Penal Code as well as 3(2)(5) of the Act, the appellants cannot be held guilty for the charge of said offences.

12. In view of aforesaid observations and discussion, both the aforesaid appeals are partly allowed. The judgment and order of conviction and sentence dated 29th April 1995 passed by the learned Sessions Judge, Sabarkantha at Himatnagar in Atrocity Case No.57 of 1993, so far as the offence punishable under Section 363 of the Indian Penal Code is concerned, is upheld. However, the very judgment and order of conviction and sentence for the offence punishable under Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed and set aside and the appellants of both the appeals are ordered to be acquitted from the charge of the said offence i.e. Section 3(1)(10). Hence, as sentenced by the learned trial Judge, the appellants shall undergo rigorous imprisonment for 02 years and a fine of Rs.2000/- and in default of payment of fine shall undergo 02 months' simple imprisonment only for the offence punishable under Section 363 of the Indian Penal Code.

13. As the appellants of both the appears are on bail since 12th May 1995, they should be given some reasonable time to surrender and hence, they are directed to surrender before the concerned trial Court on 26th October 2007, failing which the concerned trial Court shall issue a non-bailable warrant against the appellants to secure the custody of the appellants of both the appeals so that they can be sent to jail to serve the sentence. The bail bond executed by the appellants shall stand cancelled.

(C.K. Buch, J)

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